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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/855,000	05/14/2001	Kilian schuster	15632 US	1245
50659	7590	12/04/2006	EXAMINER	
BUTZEL LONG STONERIDGE WEST 41000 WOODWARD AVENUE BLOOMFIELD HILLS, MI 48304			HA, LEYNNA A	
			ART UNIT	PAPER NUMBER
			2135	

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/855,000

Applicant(s)

SCHUSTER ET AL.

Examiner

LEYNNA T. HA

Art Unit

2135

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 09 November 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

Continuation of 11. does NOT place the application in condition for allowance because: claims 21-31 was previously amended to contain new limitations that required a further search and consideration. Thus, led to a Final office action and remains rejected because Kanevsky and An reads on the claimed invention.

- 1) Examiner traverses the argument on pg.8, where the person to whom the key is communicated is made to depend on the type of event. The claimed invention states defining at least one initiating event for the procedure, defining at least one requirement for the procedure [col.1, lines 52-56], detecting the occurrence of the at least one initiating event [col.1, lines 65-67 and col.9, lines 1-3], and generating a virtual key for the at least one based on the at least one requirement detecting the occurrence of the at least one initiating event [col.15, lines 29-37 and col.17, lines 23-37]. According to the claimed, the event for the procedure is not the requirement for the procedure. The claimed does not indicate the person to whom the key is communicated is made to depend on the type of event but rather claims generating the key for the at least one person based on the least one requirement upon detecting the at least one initiating event.
- 2) Regarding arguments on pg.10-11. Claims 21 and 31 states generating the key is based on the requirement where Kanevsky discloses the key is the gesture pin or (behavioral) password such as sounds or characteristics (col.5, lines 3-9). Kanevsky discloses the type of event is an attempt to gain access or ownership to properties (col.13, lines 34-61) and the requirement is the method of user ownership verification based upon detecting the occurrence of the at least one initiating event (col.13, lines 45-50). Kanevsky discloses the key is the gesture pin or (behavioral) password such as sounds or characteristics generated (col.18, lines 9-32) based requirement on the attempt to gain access (col.15, lines 29-55). According to claimed, the initiating event can broadly given in light of entering or using an item such as building, vehicle or a computer as discussed by Kanevsky (col.13, lines 34-61 and col.31, lines 23-28). Kanevsky discloses the claimed requirement as to verify the ownership upon entering one of the building or vehicle, etc and the ability of classification process (col.31, lines 38-62). The requirement can broadly be to submit a password or biometrics related data (col.14, lines 42-57). The key is Kanevsky's gesture pin which is based on the requirement upon detecting the event of entering the building (col.30, lines 60-67). The particular person is provided or transmitted with a gesture pin which obviously has to be generated prior to forwarding the key to a user in order to gain access to either the house or vehicle (col.17, lines 4-15 and col.18, lines 9-10). The gesture pins are stored in a database for future references (col.18, lines 10-32). Therefore, Kanevsky reads on generating a virtual key for the person based on the at least one requirement upon detecting an occurrence of the at least one initiating event.

An, et al. is brought forth that a virtual key can obviously be considered as a password. An teaches digital keys are replacing user identification password pairs and digital signatures are replacing physical signatures to guarantee the identity of the sender. An teaches organizations controls access for customers or users by registering user identification and passwords. That the password is a virtual key that authenticates a user (col.1, lines 43-48 and col.2, lines 4-10). Thus, it would have been obvious for a person of ordinary skills in the art at the time of the invention that a virtual key as taught by An can be the gesture pin or password as taught by Kanevsky because the virtual key (or gesture password) authenticates the user to allow access to something (i.e. building or facilities).

- 3) Claims 21-31 remains rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Examiner traverses applicant's argument on pg.9 regarding the 101 rejection. Claims 21 and 31 recites non-functional descriptive invention. The claimed states steps of instructions to be initiated within a building. There fails to include any computer readable medium or computer hardware to process or store the method of initiating a procedure within a building.

MPEP recites:

A. Consider the Breadth of 35 U.S.C. 101 Under Controlling Law As the Supreme Court has held, Congress chose the expansive language of 35 U.S.C. 101 so as to include "anything under the sun that is made by man." *Diamond v. Chakrabarty*, 447 U.S. 303, 308-09, 206 USPQ 193, 197 (1980). Accordingly, section 101 of title 35, United States Code, provides: Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Nonfunctional descriptive material may be claimed in combination with other functional descriptive multi-media material on a computer-readable medium to provide the necessary functional and structural interrelationship to satisfy the requirements of 35 U.S.C. 101. The presence of the claimed nonfunctional descriptive material is not necessarily determinative of nonstatutory subject matter. For example, a computer that recognizes a particular grouping of musical notes read from memory and upon recognizing that particular sequence, causes another defined series of notes to be played, defines a functional interrelationship among that data and the computing processes performed when utilizing that data, and as such is statutory because it implements a statutory process.

In the Final office rejection, the examiner did provide the sections of the MPEP quoting the requirement for statutory inventions (such as above) and have explained why it is necessary to have a computer readable (tangible) medium or hardware to perform the steps of claims 21 and 31. Else, the claimed invention is merely a program product not embodied in a tangible medium and is an abstract idea. Claims 21 and 31 can broadly be a method that performs the steps verbally, in written form on a piece of paper, or via a software program. Claims 21 and 31 does not show a statutory tangible invention. Furthermore, applicant admits (on the 4<sup>th</sup> paragraph) by contradicting that "applicant's claims do not mention a computer" and "while certain steps included in the claimed method might be best performed using a computer, Applicant's invention is not so limited". This statement acknowledges the invention does not have to use a computer which contradicts what applicants are trying to prove otherwise for the 101 rejection. So therefore, refers the invention to software or program product because what else can applicant's invention be if not using a computer or limited to a computer. This proves the claimed invention is non-statutory because it is an abstract idea.

*Kanevsky*  
SPE, AU 2135